

**HIGHER EDUCATION**

**SECRETARY OF HIGHER EDUCATION**

**Rules and Procedures for Implementation of the Higher Education Facilities Trust Fund  
Act**

**Proposed New Rules: N.J.A.C. 9A:15**

Authorized By: Rochelle Hendricks, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-49, and P.L. 1993, c. 375 and P.L. 2012, c. 42.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-019.

Submit comments by March 23, 2013 to:

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The agency proposal follows:

**Summary**

On January 10, 1994, the Higher Education Facilities Trust Fund Act (P.L. 1993, c. 375) (the Act) was enacted, establishing the Higher Education Facilities Trust Fund (the facilities trust fund) in the New Jersey Educational Facilities Authority (Authority). Grants from the facilities trust fund assist New Jersey's public and private institutions of higher education to finance the

cost, or portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities related to future industry and workforce needs at New Jersey public and private institutions of higher education. Recent amendments to the Act in 2012 (the Amending Act) reflect the replacement of the New Jersey Commission on Higher Education with the Secretary of Higher Education as the State entity statutorily responsible for the coordination and planning of higher education in New Jersey.

The Act provides for the issuance of bonds by the Authority with a maximum amount outstanding at any one time not to exceed \$220 million. As bonds are paid off, new bonding capacity is created. The Secretary of Higher Education in consultation with the Authority promulgates the implementing rules, which specify approval processes for institutional projects supported by the facilities trust fund and ensure the moneys are distributed consistent with the intent of the Act. Grants were approved for the allocations of the initial \$220 million of bonds. Some of the bonds have now been paid off; thereby resulting in the ability to issue additional bonds to fund new projects. The issuance of additional bonds is subject to the approval of the State Treasurer.

The Secretary of Higher Education is promulgating these rules to provide for the allocation of money available if the State Treasurer authorizes new bonds as a result of the retirement of bonds previously issued by the Authority. The rules governing the implementation of the facilities trust fund expired in November, 2009 and the Secretary of Higher Education is proposing the rules set forth below pursuant to N.J.S.A. 52:14B-1 et seq. to implement the provisions of the Act.

The proposed rules for the facilities trust fund are organized as follows:

N.J.A.C. 9A:15-1.1 sets forth the chapter's purpose and authority.

N.J.A.C. 9A:15-1.2 provides the definitions pertinent to the rules.

N.J.A.C. 9A:15-1.3 sets forth the eligibility requirements for the grant program.

N.J.A.C. 9A:15-1.4 delineates the grant application process, including the required contents of applications.

N.J.A.C. 9A:15-1.5 presents the application review and approval process, including the criteria the Secretary will use in reviewing applications for grants from the facilities trust fund.

N.J.A.C. 9A:15-1.6 delineates the grant authorization process.

As the Secretary has provided a 60-day public comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed new rules for the Higher Education Facilities Trust Fund Act will continue present implementation of the fund. More than 440,000 students are enrolled in New Jersey colleges and universities. To be prepared for careers in a global society with rapidly changing technology, New Jersey needs state-of-the art facilities for education and research. The facilities trust fund supports instructional, laboratory, communication, and research facilities, enabling New Jersey institutions to upgrade buildings to meet student and faculty needs. All public colleges and universities and the independent institutions eligible to receive public funds under the Independent College and University Assistance Act are eligible to apply for grants from the trust fund. Having rules in place will expedite the institutional applications and project approval process, if and when the trust fund is renewed.

### **Economic Impact**

Higher education plays a vital role in the economic development of the nation and the State by providing education and training for the workforce of the future and by advancing science and technology through research. New Jersey has a large concentration of high technology industry and research facilities and is home to some of the world's most productive corporations. The facilities trust fund helps prepare New Jersey institutions to meet educational demands, which helps the State compete in the global marketplace. The proposed new rules prescribe how institutions may obtain facilities trust fund moneys.

### **Federal Standards Statement**

The proposed new rules do not require a Federal standards analysis under Executive Order No. 27 (1994) because the Higher Education Facilities Trust Fund Act was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed new rules governing the facilities trust fund govern only the process eligible institutions must follow to receive approval for projects supported with facilities trust fund moneys. There will be short-term and long-term job increases associated with funded projects. The proposed new rules will not result in the loss of any jobs.

### **Agriculture Industry Impact**

The proposed new rules will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed new rules do not apply to small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and publicly-funded independent colleges and universities in New Jersey, none of which qualify as a small business.

### **Housing Affordability Impact Analysis**

The proposed new rules do not require a housing affordability analysis because the rules govern the implementation of the Higher Education Facilities Trust Fund and there is an extreme unlikelihood that the new rules will evoke a change in the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

The Secretary believes there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules govern the implementation of the Higher Education Facilities Trust Fund Act.

**Full text** of the proposed new rules follows:

## **CHAPTER 15**

### **RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION**

### **FACILITIES TRUST FUND ACT**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### 9A:15-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Facilities Trust Fund Act, P.L. 1993, c. 375, as amended by P.L. 2012, c. 42. This chapter is adopted in order to provide a mechanism by which eligible institutions may apply for and receive grants from the Higher Education Facilities Trust Fund.

#### 9A:15-1.2 Definitions

The following words and terms, when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

"Act" means the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 through 58.

"Amending Act" means P.L. 2012, c. 42, the law that supplements and amends the Act.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Bond" means a bond or note of the Authority issued pursuant to the authority granted by the Act.

"Construction ready" means the extent to which the planning and design work have been completed and construction is able to begin, and the degree to which a project shall be completed expeditiously once begun. An evaluation of whether a project is construction ready shall include the status of the design work, project site readiness, zoning and permitting approvals, as well as

the anticipated timeframe during which the project will be completed, and the pacing of related construction.

“Cost-effectiveness” means the degree to which a project produces a positive economic analysis when considering the construction expenses, operating, and maintenance expenses, compared to the project’s resultant facilities and/or equipment, the life span of the facilities and/or equipment, facility usage and capacity, user productivity and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

"Facilities trust fund" or "trust fund" means the Higher Education Facilities Trust Fund as created by the Act.

“Grant” means a grant of moneys from the facilities trust fund approved by the Secretary for a facilities project.

“Grant agreement” means the grant agreement between the institution and the Authority, which shall set forth the terms and conditions of the grant, amount of the grant, and disbursement schedule.

"Institution" means a public or private institution of higher education that is eligible to receive State aid.

"Project" means a capital construction project to construct, reconstruct, develop, extend, or improve instructional, laboratory, communication, or research facilities.

“Secretary” means the Secretary of Higher Education.

#### 9A:15-1.3 Project eligibility

(a) Moneys from the trust fund shall be awarded in the form of grants to New Jersey’s public and private institutions of higher education for the cost, or a portion of the cost, of the

construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities.

(b) For a project to be eligible to receive a grant, the institution must:

1. Have an up-to-date long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other capital renewal requirements and pledges to use the facilities trust fund grant to advance that plan;

2. Commit, by resolution of its governing board, to maintaining the facilities project funded by the grant; and

3. Certify that it will use the funds for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities.

#### 9A:15-1.4 Grant applications

(a) Following approval by its governing board at a duly authorized meeting, an institution of higher education may apply to the Secretary for a grant from the trust fund. The institution's application shall include the following:

1. A certification that the eligibility requirements provided in N.J.A.C. 9A:15-1.3 have been met;

2. A complete description of the project, including design information if appropriate for the project;

3. A copy of the institution's governing board's resolution approving the application and committing to support the annual operating costs of and maintenance requirements for the proposed project;



4. A copy of the institution's current long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other capital renewal requirements or a certification that such a plan has already been submitted to the Secretary pursuant to P.L. 2009, c. 90;

5. A description of how the proposed project relates to the current institutional mission, plans, and priorities;

6. The program(s) or function(s) to be served by the project, including specific educational objectives to be met;

7. The estimated schedule for the completion of the project;

8. Cost data for the project along with the identification of all sources of revenue to be used to pay any cost not funded by the grant;

9. Certification by the institution that the project would be in compliance with all applicable laws, rules, codes, statutes, and government guidelines;

10. Any additional information the institution deems necessary to demonstrate how the institution's proposed project meets the objectives identified in N.J.A.C. 9A:15-1.5(b); and

11. Any other information as may be required by the Secretary on a case-by-case basis and relating to a specific application.

(b) Grant applications shall be submitted in a format provided by the Secretary.

(c) Only grant applications that are complete will be reviewed by the Secretary.

#### 9A:15-1.5 Application review and approval process

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date;
  2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are the most qualified to receive funding.
- (b) In determining whether an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed facilities project supports the following objectives:
1. Advancement of student education in the State of New Jersey;
  2. Improvement and expansion of educational opportunities for students;
  3. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;
  4. Promotion of innovation and improvement in the delivery of higher education;
  5. Advancement of study at all levels in science, technology, engineering, and mathematics education;
  6. Consistency with the institution's educational mission;
  7. Consistency with the institution's long-range facilities plan;
  8. The cost-effectiveness of the project;
  9. The degree to which the project is construction ready;
  10. Consistency of the project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents;

11. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs; and

12. Whether it serves the best interests of higher education in the State as a whole.

#### 9A:15-1.6 Authorization process

(a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate project grant applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval of the grant, pursuant to N.J.A.C. 9A:15-1.5(b), and the amount of the grant.

(c) The Secretary shall submit to the Legislature a copy of the grant application, a copy of the written certification approving the grant, and the amount of the grant, with a copy of such material to the Authority. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days of receipt from the Secretary, the grant shall be deemed to be approved by the Legislature and by the Secretary.

(d) Upon authorization of the grant pursuant to (c) above, the institution shall enter into a grant agreement with the Authority, which shall set forth the terms of the grant award and be provided to the board of the Authority for approval by resolution.

(e) Each grant award shall be contingent upon the recipient governing board's entering into a contract or contracts to construct the facilities project within one year of the date on which the

grant funds are made available. The funds shall be considered available on the date of the Authority's issuance of the bonds to fund the facilities project or on the date of the authorization of the grant, whichever is later.

(f) Each recipient of a grant shall provide such information as the Secretary may request regarding the use of the grant and the progress of the project.

(g) The Secretary may reduce or cancel entirely the amount of a grant:

1. If an institution determines not to undertake a project for which a grant was awarded;
2. To adjust for actual project expenses in a manner consistent with the approved grant;

or

3. If the project is not substantially completed and the grant substantially disbursed six months after the estimated construction completion date set forth in the grant application, as adjusted for any actual delay to the institution entering into a construction contract consistent with (d) above.

(h) No reduction in the grant amount shall be made pursuant to (g)3 above if:

1. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or
2. In the sole determination of the Secretary, there are other compelling and documentable reasons.